

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 1:11-cr-099

Also Case No. 1:13-cv-123

-vs-

Chief Judge Susan J. Dlott

Magistrate Judge Michael R. Merz

:

RODNEY RIDDLE,

Defendant.

ORDER GRANTING MOTION TO AMEND § 2255 MOTION

This case is before the Court on Defendant's Amended Motion to Vacate pursuant to 28 U.S.C. § 2255 (Doc. No. 139). At the Court's instruction, that document was docketed as a Motion to Amend and the United States was provided an opportunity to respond, which it has now done (Doc. No. 141).

The Government's sole opposition is based on its claim that the Amended Motion amounts to a second or successive § 2255 motion which is presented without the certificate from the Sixth Circuit required by 28 U.S.C. § 2255(h). The Magistrate Judge disagrees because there is as yet no final judgment on the prior motion and leave to amend lies within the discretion of the District Court. Furthermore, the motion to amend has been filed within the one-year statute of limitations provided in 28 U.S.C. § 2255(f).

As the Magistrate Judge noted on December 20, 2013 (Order, Doc. No. 140), granting the amendment has the effect of rendering the pending § 2255 Motion (Doc. No. 98) moot.

Accordingly, the Clerk will terminate as moot Doc. Nos. 98 and 117. Defendant's Motion to Withdraw his guilty plea (Doc. No. 71) remains pending for Chief Judge Dlott's decision on the Magistrate Judge's Reports and Recommendations (Doc. Nos. 116, 117, 130).

The United States has no obligation to respond to the Amended Motion until ordered to do so by the Court.

January 13, 2014.

s/ *Michael R. Merz*
United States Magistrate Judge